IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr.Appeal No. 580 of 2000

Date of Decision: 14th November, 2007

State of H.P.		Appellant
	Versus	
Munish Bakshi		Respondent

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? No.

For the appellant: Mr. Ashok Chaudhary, Addl. Advocate General.

For the respondent: Mr. Rakesh Jaswal and Mr. Vikas Rathore, Advocates.

Sanjay Karol, J. (Oral)

The present appeal arises out of judgment dated 10th May, 2000 passed by Judicial Magistrate, Ist Class (2), Dharamshala, District Kangra, H.P. in Case RBT No.42-II/99/98, titled as State of H.P. vs. Munish Bakshi, acquitting the accused of the charged offence.

As per the case of the prosecution, on 24.6.1998 Namita Sharma, (PW-2), a student of District Institute of Education Training, Dharamshala alongwith her friend Minakshi (PW-6) was on her way from Kachehari Adda to the Institute when the accused obstructed her passage and wrongfully restrained her near the police ground. He also snatched her Dupatta and after pulling her arm by winking signaled her to accompany him. On showing some resistance, the accused threatened her

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Whether the reporters of Local Papers are allowed to see the Judgment?

of dire consequences. In the meantime, one Dev Raj (PW-7) came at the spot and on seeing him the accused immediately ran away. The complainant narrated the story to PW-7 and also telephonically informed her father Gopal Krishan (PW-1). The matter was reported to police by PW-1 and to the college authorities by PW-2. Based on the complaint of PW-1, FIR No.155/98 dated 27.6.1998 (Ext.PW8/A) was registered with Police Station, Kangra at Dharamshala, H.P. The matter was investigated and the complaint made by PW-1 on 25.6.1998 Ext.PW-1/A and the complaint made by PW-2 to the Principal of the college Ext.PW-2/A were taken by the police. The matter was further investigated and with the completion of the inquiry the challan was filed in the Court for trial.

Notice of accusation was put to the accused for commission of an offence under Sections 294, 341, 354, 506 and 509, IPC. The accused did not plea guilty and claimed trial.

In order to prove its case, prosecution examined eight witnesses. Statement of the accused under Section 313, Cr.P.C. was also recorded.

After considering the material on record and more particularly depositions of the witnesses, the trial Court acquitted the accused for the reason that statements of the witnesses, particularly, that of PW-1 and PW-2 were contradictory to each other and another spot witness PW-6 had not supported the case of prosecution and was declared hostile.

I have perused the record. As per the version of PW-1 the incident took place on 24.6.1998. The statement of PW-1 stands contradicted by his own complaint Ext.PW-1/A, wherein he has

categorically mentioned that the incident took place on 23.6.1998. Further in the said complaint, he has only mentioned that he was informed by his daughter, PW-2, that the accused had threatened her with dire consequences and snatched her Dupatta, whereas in his statement made before the Court he has deposed that he was informed by his daughter that the accused had not only pulled her Dupatta but also caught hold of her from her arm. According to his version right from the day of admission into the college the accused had been abusing his daughter. However, in his complaint (Ext.PW-1/A) he is totally silent about this fact. In this view of the matter, the statement does not inspire confidence and cannot be relied upon to prove the guilt of the accused.

Similarly, version of Namita Sharma (PW-2) is contradictory to her complaint dated 25.6.1998 (Ext.PW-2/A) and also the prosecution story. In her complaint, she has categorically stated that the incident took place on 24.6.1998 when the accused pulled her Dupatta but as per the story of the prosecution the incident took place on 23.6.1998. Therefore, the prosecution story stands falsified. She has improved her statement in the Court. She has deposed that the accused had threatened her that he would abduct her from the hostel and had signaled her, by winking, to accompany him. This fact is not mentioned in her complaint Ext.PW-2/A. The incident, as per the prosecution, took place on 23.6.1998 and the matter was reported by her to the authorities only on 25.6.1998 and by her father on 26.6.1998. The delay in making the complaint has not been explained by the prosecution at all. The version of the prosecution is not proved by Ms. Minakshi (PW-6), who was in fact the sole independent witness. She was declared hostile and in her

cross-examination by the Public Prosecutor nothing has come out, which would prove the guilt of the accused in the commission of offence.

As per version of Dev Raj (PW-7), he is not the spot witness. According to him, on reaching the spot he was informed by PW-2 that the accused had pulled her Dupatta and on reaching the hostel PW-2 gave him the written complaint. The prosecution version is also falsified by his statement. As per his version written complaint was handed over by PW-2 on the very same day of incident, whereas the complaint (Ext.PW-2/A) is dated 25.6.1998. Therefore, the story of the prosecution as also PW-1 and PW-2 stands falsified by the version of this witness as he has stated that PW-2 had reported only about the pulling of Dupatta.

Shri J.K.Sacheva (PW-3), Shri Atul Kumar (PW-4) and Shri Amar Nath (PW-5) are the witnesses who have deposed with regard to disciplinary action taken by the college authorities. However, perusal of Ext.PW-3/A, which is a report indicating the action taken by the authorities against the accused does not link the accused with the incident for which he has been charged. In this view of the matter, it cannot be said that the prosecution has been able to prove the guilt of the accused in the commission of offence, for which he has been charged.

ASI Surinder Kumar (PW-8) is the Investigating Officer, who has carried out the investigation. No doubt, he has proved on record the investigation carried out by him, however, keeping in view the material on record, particularly, the statements of PW-1, PW-2, PW-6 and PW-7 it cannot be said that the accused has committed the offence for which he has been charged.

The accused has the benefit of having been acquitted by the Court below. The material on record has been fully appreciated by the trial Court and there is no perversity in the same. For the same reason, the appeal is dismissed. Bail bonds are discharged.

14th November, 2007
(C)

(Sanjay Karol)
Judge.